1956

1950

TIC No.

S. Bij. 6/50

Examined

Legal DEPARTMENT

A BRANCH

Subject. Bijapur Suit

Civil Suit No. 180 of 1949

Sayabanna Shivalingappa Budihaj - Plff

Vs.

The Province of Bombay and others } - Deffs.

For a declaration that the auction Sale, dated the 10th Aug. 1948, held by the circle Inspector Kamalli is illegal and avoid and for refund of Rs. 225. paid by him as earnest money

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File No. S. Bijapur 6/50

Std. Secti. Slip 24-B

S. Bij. 6/50

CONTENTS.

Legal Department File No. S. Bij. 6/50.

Sr.No.	R.I./O.No.	Subject	Pages.
		Suits Bijapur.	
		C.S. No. 180 of 1949.	
		S.S. Budihaj. Plff.	
		v/s.	
		The Province of B'bay and another. Defts.	
		For a declaration that the auction sale is illegal and void for refund of Rs. 225- paid by him as earnest money.	
			1-40.

Information under Rule 118 of the Law Officers Rules in respect of C.S. No. 180/49.

Papers to be submitted to the Head of the Department.

.....

1. (i) The number of the suit.	C.S. No. 180/49.
(ii) The date on which, the Court in which it was instituted.	12-4-49. In the Court of Civil Judge, Junior Dn., Bijapur
(iii) The names of all the parties.	1. Sayabanna Shivalingappa Budihal of Kannolli, Tal. Sindgi. Vs. 1. The Collector of Bijapur. The Government of Bombay Province. 2. Mr. Jetteppa Ramappa Dhor of Budihal, tal. Sindgi.
(iv) The amount or value of the claim	:Rs. 225/-
(v) The date fixed by the Court for the first hearing.	21-7-1949.
(vi) Whether notice of the action has been given under section 80 C.P.C. and if so, the date of delivering of such notice.	Yes., please vide page 133, file No. II.
2. The following papers shll be sent along with the report :-	
(a) A copy of the plaint in the regional language together with copies of any documents or list of documents annexed to the plaint.	The plaint is already in English. No. such documents have been annexed to the plaint which require to be translated into English.
(b) A translation of the same in English typed in half margin etc.	Such documents have been translated and submitted.
(c) A full and detailed statement :	
(i) of the circumstances which led to the suit.	For having forfeited the 1/4th bid amount of Rs. 225/- to the Govt. under section 175 L.R.C.
(ii) Of the course which it is proposed to adopt namely whether to admit, compromise or defend the suit and of the reasons for the same and ;	The suit can be defended for the reasons described by the Mamlatdar in his endorsement No. LBP-551 dated 19-2-49 (Pl. vide page 147, file No.II).
(iii) If it is proposed to defend the suit of the ground on which it is proposed to base the defence and of the evidence to be adduced.	There is no documentary evidence on behalf of the plaintiff in support of his contention that the site in question does not belong to Govt. Because of the default of the plaintiff in crediting the remaining 3/4th bid amount of the plot within the prescribed period as required by section 187 L.R.C. the 1/4th bid amount credited by him was forfeited to Government under section 175 L.R.C.

.....2

(d) If the case turns on documentary evidence, copies of the documents (or the originals) relied on by the plaintiff (if procurable) and by the defence.	There are no documentary evidences relied on by the plaintiff.
(e) All the correspondence and written proceedings whether in English or in any regional language. Covicted with the subject matter of the suit together with translation in English of all important papers which are in the regional language.	Enclosed.
(f) A statement in English containing a brief description of all the documents referred to in clauses (d) and (e) above which are in the regional language.	All the persons who were present and offered their bids during the course of the auction sale have admitted that the date, time and place of the auction sale of the plot in question was published at the village by beat of drum on the previous day. They have further admitted that the sale condition Memo was read over to them before their signatures were taken on it.

for Collector, Bijapur.

S.23/8.

C.S. No. 180 of 1949. 171

In the Court of the Civil Judge, Sr. Dn., Bijapur.

1. Sayabanna Shivalingappa Budihal, Lingayat, 50, Agri. of Kannolli, Tal. Sindgi. --- Plaintiff.

Vs.

1. The Collector of Bijapur.
   The Govt. of Bombay Province.
2. Jetteppa Ramappa Dhor, Dhor, age 40, of Budihal, Taluka Sindgi. ..... Defendants.

Suit for declaration for the grant of the site or refund of the money in the alternative.

Claim Rs. 225/-.

In this the plaintiff begs to submit as follows :-

1. That there is an open Govt. site in front of the houses of the applicant in Kannoli, taluka Sindgi. The open site measures about F S. E.W cubits 45 x 20
The applicant applied to the Mamlatdar of Sindgi for the grant of the above site leaving a lane in front of the applicant's house between and that of opponent No. 2. The boundary of it is as follows :-
South - Government road.
West - Applicant's house and Kallappa Kasappa Bedar.
North - Public well (drawing well)
East - The house of the opponent No. 2 Chandappa and Timjappa Dhor.

The plaintiff applied so in 1946.

2. After this the C.I. Kannolli Bhag defendant and servant of the deft. No. 1 set up the dependant No. 2 to apply to the Mamlatdar of Sindgi Taluka - the servant of Deft. No. 1 on or about 21-12-46 for a grant of the above site in the Dhor lane. The Plff. again applied to the Mamlatdar of Sindgi - servant of deft No. 1 on 28-5-1947 as a reminder for this and other application of 1946. The reply of the Mamlatdar of Sindgi was that as the site applied belongs to Samgar Yakappa and so it could not be granted to the applicant - Plff.

The Mamlatdar has replied that the site belongs to Jetteppa Samagar (Pl. vide page 2, file I). The site auctioned is different from the one shown in the sketch at page 3, file II.

3. Again then applications were sent to the C.I. Kannolli Bag. Hearing that above site was put up for sale, the Plff. went to the Chavadi when the C.I. told the Plff. that the site in Pinjar lane was being put up for sale and afterwards the site applied for by the Plff. would be sold.

The allegations are baseless Please vide Mamlatdar's reports at pages 97 to 100, file II and Collr's order No. LBPSR-1887 of 13-10-48 at page 107, file II.

4. The plaintiff thinking that the site applied for was being sold made a bid for the whole site as per his former application and credited Rs. 225/- on 10-8-1948. On learning that the above whole site applied for by the Plff. was not the one put up for sale by the C.I. The Plff. applied

-do-

to the Collector i.e. defendant No.1 on 16-8-48 that hisagent C.I. falsely represented that plff's former - application for the open site and that the above sale be set aside under section 163 L.R. Code and ~~28~~ 178 as fraud was committed on the plaintiff. The application is still pending. Then the agents and servants of deft. 1 colluded with each other with V.O. of Kannolli and got false records prepared and ~~x~~threatened the Plff. by giving a notice as to why he should not be prosecuted for false application to the deft No. 1.

5. The village of Kannolli is a small village of 1500 souls and the Pinjar lane site sold on 10-8-1948 being a larger one double in size fetched only for Rs. 400 and while this site being a half one would never fetch Rs. 900/-.

The site in question had fetched a price of Rs. 900/- one to keen competition (Pl. vide page 63). The contentions of the applicant are baseless.

The V.Os. and C.I. Kannolli ~~in a xxxxx xxi~~ Bhag ~~xxxxx~~ have reported to the Mamlatdar Sindgi that this open site is situated in the Dhor lane - there are no Chavadi or Masjid or Dharmashala near by and the Panch valuation will never exceed Rs. 15/- and the rent will be annas 0-4-0 per year and it should not be put for public auction and it would never fetch price Rs. 15 and the villagers have no - objection to its grant. This was on 3-5-1947.

Yes. Please vide page,45, file No. III.

7. This being the case the deft. No.1's agent and servants colluded with Deft. No. 2 prepared false and incorrect record and gave a false notice to the Plff. with a view to put him to the wrongful loss of Rs. 225 and harassing him. Immediately on 12-12-48 in order to coerce him to give up his claim for the deposit of Rs. 225 and fixed the date of hearing on 20-12-48. The plff. accordingly attended the Mamlatdar's Court and applied for certified copies of the applications filed in 1946 and on 28-5-47 and sent Rs.~~20~~ 2/- by M.O. still copies have not as yet been supplied and the M.O. is returned to the Plff.

The 1/4th bid amount was ordered to be forfeited to Government as the Plff. failed to credit the 3/4th bid amount in time as required by Sec. 174 L.R.C. (P. 107, file II).

8. The plff. applied to the Mamlatdar, Collector, and D.D. Collector M.D. servants of Deft.1 to allow him to appear through his pleader and to give his - statement and to produce his - papers and documents on 19-11-48 by registered post but to no purpose.

The applicant gave an application to the Mamlatdar on 19-1-1949 to drop the hearing and accepting the explanation i.e. statement etc. as he has given a notice under Sec. 80 of C.P.C. (Pl. vide page 129, file II). Hence his allegation is baseless.

9. The Plff. is a poor illiterate and ignorant agriculturist. He was not given any opportunity to bring his pleader and to produce his statement, was served with a vilifying

The applicant was given opportunity to appear through Pleader and once time was granted to him (Pages 113 & 115 file II). The application

notice to prosecute him. As yet the copy of his first application made in 1946 to the Mamlatdar of Sindgi is not given to him. It is missing So, this suit is for a declaration to the effect that the sale on 10-8-48 is a fraudulent one and thorgh deft's agent coerced plff. to credit Rs.226 on 10-8-48 on the false assumption and his request in his two applications of 1946-47 would be granted and to refund the sum of Rs. 225 to the plff. and to declare the whole sale proceedings in this matter and cases were bogus, ~~xxx~~ false and illegal and irregular as it did not comply with the provisions of law section 166 and 178 of L.R. Code. The cause of action has arisen on 10-8-48 or thereabout.

dated 10-12-46 is not misplaced (Pl. vide page 1, file I). The sale is not fraudulent. It is legal.

16. The parties belong to this place and the property and sale took place in Kannolli, taluka Sindgi and the court has jurisdiction to try it.

11. The suit being for declaration of injunction to stop execution of sale recovery money, alternative the valuation is for Rs. 225/- and hence this is this sum. Pleader's fees is the same and Court's jurisdiction is the same.

12. It is prayed that :-

(1) The Court be pleased to declare the sale proceedings concerned were illegal and irregular and bogus not having provisions of sec. 166 and 178 of L.R. Code.

(2) That there was Panch valuation at Rs. 15/- or rent of annas 4 per year and the village site double in size in simpi lane on the same day fetched Rs. 200 and this site being in Dhor lane would not fetch more than panch valuation.

It depends upon individual case i.e. location of the site etc.,

(3) That the C.I. and V.O. made false representation to plff. about the measurement of the site proposes by concealing plff's former applications of 1946 and 25-7-47 and practiced fraud on him to produce Rs. 225/-

This is completely baseless vide reply to paras 3 & 4.

(4) The Deft.1 's servants, Mamr. and D.J. Collector, N.L. and Collector did not hear the various applications made to them since 15-8-48 in this connection did not allowed him to appear through Pleader and put in his statement.

Vide reply to para 9.

(5) That the sale of 10-8-48 be set aside and the amount of Rs. 225/- be refunded to the plff.

(6) The sale proceedings papers in this connection be got produced at once and sealed.

(7) Any other reliefts which the court thinks fit, equitable and proper.

Bijapur, 19-1-49.

I, Plff. Sayabanna Shivalingappa do hereby solemnly declare on oath that the contents of this suit from paras 1 to 10 are true and correct as per his instructions and written and translated to him in Kannad.

Bijapur,
12-1-49.

Notice of the suit has been given to the Collector of Bijapur on 12-4-49 and now the suit is filed.

Sd. x x x
12-4-49. xd. Pleader.

Filed in Court of 12th April 1949.

Sd. x x x
Pleader for Plff.

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for Collector, Bijapur.

S.23/8.

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Bijapur C.S. No. 180 of 1949.

Govt. Village site at Kannolli in Taluka Sindgi (Dist. Bijapur) was sold by auction at which the Plaintiff gave the highest bid and also paid ¼ of the bid price as required by the conditions of the sale. Subsequently, he alleged that a fraud was committed on him by the Circle Insp. and requested cancellation of the sale. On investigation allegations of the Plaintiff were found to be false and further as the Plaintiff failed to pay the full amount in time his deposit was forfeited and he was asked to show cause why action should not be taken against him for making false allegations. The Plaintiff has now filed this suit for a declaration that the sale was void and for refund of his deposit.

The suit is defensible. Sanction may be accorded to the defence on the lines of the accompanying brief which is for approval.

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on 19.10.49 B

xNo. 11660
d 19-10-1949

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In the Court of the Civil Judge, Senior Division, at Bijapur.
Bijapur Civil Suit No.180 of 1949.

Sayabanna Shivalingappa Budihal. .... Plaintiff;

Vs.

The Province of Bombay and another. ... Defendants.

The Written Statement of defendant No.1 is as follows :-

1. The Collector of Bijapur is wrongly impleaded. He is not liable to be sued in his official capacity. It should be ordered that his name be deleted.

2. The order of forfeiture was passed by the Prant Officer, Bijapur in his capacity of a revenue officer. The plaintiff has not preferred appeals to the higher Revenue Authorities against that order. The suit is therefore barred under section 11 of the Bombay Revenue Jurisdiction Act, 1876.

3. The plaintiff claims the refund of Rs. 225 in clause (e) of para. 10 of the plaint. He has not paid the proper court fee on that count. So the suit is not tenable so far as that relief is concerned.

4. The allegations in paras. 1 to 8 of the plaint are not true and are hereby denied. The sale in this case concerns the village site belonging to the Government. The said sale was conducted as per the provisions of the Land Revenue Code and the rules thereunder. Hence the plaintiff cannot set up the plea that the sale was illegal or irregular. The allegations of fraud and collusion etc. as stated in the said paras are false and frivolous and are hereby expressly denied.

5. The plaintiff gave an offer at the said auction sale for Rs. 900/- and his bid was accepted. The plaintiff did not produce the full amount of the purchase money within 15 days as required by the terms of the sale and section 174 of the Land Revenue Code. Hence the Prant Officer was competent to order -

forfeiture of plaintiff's deposit of Rs. 225/- and also to order resale. So the said order of the Prant Officer is legal. This suit is therefore not tenable.

6. It is submitted therefore that the suit fails and should be dismissed with costs.

District Government Pleader, Bijapur.

I, K.R.Rao, District Government Pleader, Bijapur declare that what is stated in paragraphs 1 to 6 is true on information received and believed to be true.

Signed on at Bijapur.

District Government Pleader, Bijapur.

K. 9/11.

Civil Suit No.180 of 1949. 1943

Issues.

1. Whether the plaint discloses a cause of action against the defendant ?

2. Whether the sale proceedings are illegal, irregular and void and contrary to sections 166 and 168 of the Land Revenue Code as contended ?

3. Whether the suit is barred under the Bombay Revenue Jurisdiction Act ?

4. Whether there was default on the part of the plaintiff to pay the balance amount due under the auction sale ?

5. Whether proper court fee is paid ?

No further issue is sought.

The question as to court-fee will be argued on 23-1-1950.

January 19, 1950. Sd. A.C.Sequeira.
Civil Judge, Sr.Dn.Bijapur.

" True Copy "

Dist.Govt.Pleader, Bijapur.

Suits.

Bijapur.

For a declaration that the auction sale, dated the 10th August 1948, held by the Circle Inspector Konnolli is illegal and void and for refund of Rs. 225 paid by him as earnest money.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 13045.

Bombay Castle, 17th November 1949.

Letter from the Collector of Bijapur No. L.A.W., dated the 28th August 1949—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION) BIJAPUR.
CIVIL SUIT NO. 180 OF 1949.
Sayabanna Shivalingappa Budihal ... Plaintiff;
versus
The Province of Bombay; and another ... Defendants.

Memorandum to the District Government Pleader, Bijapur, No. 11820, dated the 24th October 1949—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

To

*The Revenue Department,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1949.

Copy forwarded for information and guidance to

Submitted after issue
2 File in S. Bij. 150 (n.R)
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Supdt.

BIJAPUR C. S. No. 180 OF 1949.

Chronological Statement of Facts.

This suit is filed by Sayabanna Shivalingappa Budihal of Kannolli, Taluka Sindgi for a declaration that the auction sale, dated the 10th August 1948, held by the Circle Inspector, Kannolli is illegal and void and for refund of Rs. 225 paid by him as earnest money.

2. On 10th November 1946, the plaintiff applied for grant of site shown in the sketch at page 3 of File II. His application was, however, rejected as the site belonged to one Jakappa Samgar. Subsequently on 10th August 1948 the site shown in the sketch at page 5 of File I which was adjacent to the site asked for by the plaintiff was put to auction and the plaintiff gave the highest bid of Rs. 900 for the same. He also paid Rs. 225 being the ¼ of the bid price as per conditions of the auction sale.

p. 63, File I.

3. On 20th August 1948, the plaintiff applied to the Collector alleging that a fraud was practised on him by the Circle Inspector and that the procedure followed in the sale was irregular and requested that the sale should be set aside. On inquiry, however, it was found that the allegations made by the plaintiff were false and frivolous. On 4th October 1948, as the plaintiff had failed to pay the bid price, the Prant Officer, Bijapur, directed that the amount paid by the plaintiff should be forfeited and that the sale should be set aside and the plaintiff should be asked to show cause why action should not be taken against him for making false allegations. This action of the Prant Officer was approved by the Collector in his No. I.B.P.S.R. 1887, dated 13th October 1948.

pp. 71-73, File I.

p. 105, File I.

4. On 19th January 1949, the plaintiff gave a notice of suit under section 80 of the Civil Procedure Code, 1908, and on 12th April 1949, filed the suit in the Court of the Civil Judge, Senior Division, Bijapur, for the reliefs stated above.

Grounds of Defence.

Bar of Suit under the Bombay Revenue Jurisdiction Act.—The plaintiff has asked for relief against the forfeiture of his bid amount. This order of forfeiture was passed by the Prant Officer, Bijapur who is a Revenue Officer acting as such. If aggrieved the plaintiff should have preferred appeals against his order to higher Revenue Authorities. He has failed to do so and consequently his suit is barred under section 11 of the Bombay Revenue Jurisdiction Act, 1876.

2. Merits.—The sale in this case was of village site belonging to Government. Sales under the Land Revenue Code are governed by Rules contained in Chapter XVIII of the Bombay Land Revenue Rules, 1921. Rule 129 of these Rules provides that every sale by auction under these Rules or in pursuance of any of the provisions of the Code, shall be conducted, so far as may be, in accordance with section 165, 166, 170 to 177 both inclusive and 180. The proclamation and written notice of sale required to be issued under sections 165 and 166 shall be in one of the forms U or W, with such modifications, if any, as may be necessary. These provisions appear to have been duly complied with and in the circumstances, the plaintiff cannot set up a plea that the sale was irregular. The plaintiff has contended that a fraud

was practised on him. This allegation is false and should be denied. The plaintiff gave an offer at an auction sale which was regularly conducted and his offer was accepted. As per terms of the sale, the plaintiff should have paid the full amount of the purchase money within fifteen days. (See section 174 of the Land Revenue Code). As he failed to pay, it was competent to the Prant Officer to order forfeiture of his deposit and to order re-sale. His action is, therefore, proper and fully covered by section 175 of the Land Revenue Code, 1879. The plaintiff thus has no grievance.

For all these reasons, it should be urged that the suit fails and should be dismissed with costs.

(Note.—The Collector of Bijapur is impleaded in the suit along with the Province of Bombay. He is not liable to be sued in his official capacity. The District Government Pleader should ask the Court to delete his name from the plaint).

5 25

In the Court of the Civil Judge, Senior Division, Bijapur.

At Bijapur.

Civil Suit No.180 of 1949.

Pleaders.

Shri V.G.Muddebihalkal for plff.

1. Sayabanna Shivalingappa Budihal of Kannoli, taluka Sindgi. plaintiff.

Vs.

Shri K.R.Rao, Dist. Govt.Pleader for deft No.1.

1. Collector of Bijapur. The Government of Bombay Province.

Shri A.M.Jahagirdar for deft No.2.

2. Jetteppa Ramappa Dhor, of Budihal, taluka Sindgi. respondents.

Judgment.

Suit for a declaration that the sale is invalid under sections 166 and 178 of the Land Revenue Code, and for the return of Rs.225/-.

2. The plaint is based on the allegations that the plaintiff made an application to Government for the grant of an open site, that it had been represented to him that the entire open site was being sold to him, that at the instigation of defendant 2 false record was prepared, that he is an ignorant agriculturist, that he was threatened with prosecution and that in consequence this suit is brought.

3. The Government of Bombay has raised the following pleas: (a) The Collector is unwarrantably impleaded (b) The order of forfeiture was according to law, (c) The suit is barred under section 11 of the Bombay Revenue Jurisdi--ction Act (d) The proper court fee is not paid (e) The Revenue sale is valid (f) No fraud was practised on the plaintiff, and (g) The suit should be dismissed for the following reasons:-

" The plaintiff gave an offer at the said auction

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sale for Rs.900/- and his bid was accepted. The plaintiff did not produce the full amount of the purchase money within 15 days as required by the terms of the sale and section 174 of the Land Revenue Code. Hence the Prant Officer was competent to order forfeiture of plaintiff's deposit of Rs.225/- and also to order resale. So the said order of the Prant Officer is legal. This suit is, therefore, not tenable.

(4). Defendant 2 raised the similar points in his written statement.

(5). The following issues were framed in the case:-

1. Whether the plaint discloses a cause of action against the defendants ?
2. Whether the sale proceedings are illegal, irregular and void and contrary to sections 166 and 168 of the Land Revenue Code as contended ?
3. Whether the suit is barred under the Bombay Revenue Jurisdiction Act ?
4. Whether there was default on the part of the plaintiff to pay the balance amount due under the auction sale ?
5. Whether proper court fee is paid ?

(6). My findings are:-

1. Yes, but no cause of action is proved.

2. Legal. 3. No. 4. Yes. 5. Yes.

Reasons.

(7). There was a sale of an open site. The plaintiff was declared to be the purchaser. He deposited immediately a sum of Rs.225 on 10-8-1948. In default of payment of the balance amount, the deposit was forfeited and the property was resold. The plaintiff's case is that fraud was practised on him in the matter of the sale and that he paid a sum of Rs. 225 in the belief that the entire property was being sold to him, and not merely the suit strip.

(8). In this connection it is relevant to refer to the report made by the Prant Officer on 4-10-1948 Exh. 31

15-29

extracted below:-

" From perusal of the Mamlatdar's report, it is apparent that allegations made by Sayabanna are false and frivolus. The applicantxx, who has offered bid in the sale, has failed to credit the remaining 3/4 bid amount. So the 1/4th bid amount, credited by the bidder, may be forfeited under section 174 L.R.C. and the sale of the site held on 10-8-1948 may be set aside and release may be ordered. The applicant should be asked to show cause as to why action should not be taken against him for having made false allegations against the C.I".

(9). The plaintiff examined himself at Exh.26 and his case seems to be that a sum of Rs.225/- had been paid to the Circle Inspector not by way of deposit under section 173 of the Land Revenue Code, but in the shape of a"bribe", or something of that sort. I say so because he was not prepared to decisively state that it was offered as a bribe. In his evidence he alleged that the Circle Inspector required a sum of Rs.225/- in connection with " his expenses for going here and there and for securing the site ".

(10). It is also alleged that no proclamation was made and that there was no beat of drum. In cross-examination he roundly stated that an auction sale was not, as a matter of fact, held. To lend colour and tone to his version he stated that a sum of Rs.225/- was paid to the Circle Inspector in his house and that he failed to pass a receipt. His witnesses say much the same thing.

(11). The documentary evidence which is of an unimpeachable character clearly shows that there was proclamation and that an auction sale was held on 10-8-1948. The amount of Rs.225/- paid by the plaintiff was thereupon credited to Government. Consequently, the story that it was paid to the Circle Inspector as illegal gratification is

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only to be read to be discredited. The documentary evidence establishes that the plaintiff applied to the Revenue Authorities to give him the site, that the panchas valued th property, that there were bidders, that the plaintiff offere the highest bidd viz:, Rs.900; that in default of payment the balance amount the deposit was forfeited, and that in consequence the property was resold and purchased by defendant No.2. Apparently, the suit is instituted to avoid the inquiry in connection with the notice issued to him to show cause why he should not be prosecuted.

(12). In the result, the suit fails and is dismissed. Defendants to recover their costs from the plaintiff in separate sets.

30-11-1950.

Sd. Ax.C.Sequeira.
Civil Judge,Sr.Dn.,Bijapur.

" True Copy "

District Govt.Pleader,Bijapur.

Suits. 57/33

Bijapur.

For a declaration that the auction sale, dated the 10th August 1948, held by the Circle Inspector Konnolli is illegal and void and for refund of Rs. 225 paid by him as earnest money.

GOVERNMENT OF BOMBAY
Legal Department
Resolution No. 300
Bombay Castle, 5th January 1951

Read Government Resolution, Legal Department No.13045 dated 17th November 1950.

Endorsement from the District Government Pleader, Bijapur No. 815 dated the 2nd December 1950 forwarding an uncertified copy of judgment and stating that the suit noted in the margin

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IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION) BIJAPUR Civil Suit No. 180 of 1949
Sayabanna Shivalingappa Budihaj-Plaintiff
Vs.
The Province of Bombay; and another-Defendants

) was decided by the Civil Judge (Senior ~~Southern~~ Division)

Bijapur, on the 30th November 1950, when the following order was passed:-

"The suit fails and is dismissed. Defendants to recover their costs from the Plaintiffs in seperate sets".

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

Issued on 5/1

original. E. Bhamgara

(E. P. Bhamgara)
Additional Assistant Secretary to Government.

Submitted for signature.
3/1/51
3/1

To
The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

A.A.S.

P.H.R.
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Submitted after issue.
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DECREE.

Civil Suit No.180 of 1949.

In the Court of the Civil Judge, Bijapur.

1. Sayabanna Shivalingappa Budihal,
Lingayat, age50, agriculture of
Kannoli, taluka Sindgi. plaintiff.

Vs.

1. Collector of Bijapur. The Government
of Bombay Province.
2. Jetteppa Ramappa Dhor,Dhor,
Agriculture,,40 of Budihal taluka Sindgi. defendants.

Suit for declaration for the grant of the site or refund of the money in the alternative.

Claim Rs.225/-

In this the plaintiff begs to submit as follows:-

1. That there is an open Government site infront of thehouse of the applicant in Kannoli, taluka Sindgi.The open sitemeasures about 45 X 20 (N.S. E.W.) cubits. The applicant applied to the Mamlatdar of Sindgi for the grant of the above site leaving a lane in front of the applicant's house and between that of opponent No.2. The boundary of it is as follows:-

Sout:- Government Road.

West:- Applicant's house and Kallappa Kasappa

North:- Public well(drawing well).

East:- The house of the opponet No.2, Chandappa and Tuljappa Dhor.

The plaintiff applied so in 1945.

2. After this, the C.I.Kannoli,Bhag, defendant and servant of the defendant 1 set up the defendant No.2 to apply to the Mamlatdar of Sindgi Taluka the servant of defendant No.1 on or about 21-12-1946 for the grant of the above site in the Dhor lane.The plaintiff again applied to the Mamlatdar of Sindgi servant of defendant No.1 on 28-5-1947 as a reminder for this and other application of 1946.The reply of the Mamlatdar of Sindgi was that as the site applied belongs to Samagar Jakkappa and so it could not be granted to the applicant plaintiff. Again then applications were sent to the C.I.Kannoli Bhag. Hearing that above site was put up for sale, the plaintiff went to the Chavadi when the C.I. told the plaintiff that the site in Pinjar lane was being put up for sale and afterwards the site applied for by the plaintiff would be sold.

3. The plaintiff thinking that the site applied for was being sold made a bid for the whole site as per his former application and credited Rs.225 on 10-8-1948.On learning that the above whole site applied for by the plaintiff was not the one put up for sale by C.I. the plaintiff applied to the Collector i.e. defendant on 15-8-1948 that his agent C.I. falsely represented that plaintiff's former application for the open site that the above sale be set aside under section 166 L.R.Code and 178 as fraud was committed on the plaintiff. The application is still pending.Then the agents and servants of defendant No.1 colluded with each other with the village Officer of Kannahi and got false record prepared and threatened the plaintiff by giving a notice as to why he should not be prosecuted for false application to the defendant No.1.

4. The village of Kannoli is a small village of 1500 souls and the Pinjar lane site sold on 10-8-1948 being a larger one double in size fetched only for Rs.400/- and while this

side being a half one woul never fetch Rs. 900/-.

5. The village officers and C.I. Kannol' Shag have reported to the Mamlatdar Sindgi that this open site is situated in the Dhor lane there are no chavadi or Masjid or Dharmashala near by and the panch valuation will never exceed ;, 15 and the rent will be Rs. 4/- per year and it should not be put for public auction and it would never fetch price of Rs. 15/- and the villagers have no objection to its grant, this was on 3-5-1947.

6. This being the case of defendant No.1's agent and servants colluded with defendant No.2 prepared false and incorrect record and gave a false notice to the plaintiff with a view to put him to the wrongful loss of Rs. 225/- and harassing him immediately on12-12-1948 in order to coerce him to give up his claim, for the defisit of Rs. 225/- and fixed the date of hearing on 20-12-1948. The plaintiff accordingly attended the Mamlatdar's court and applied for the certified copies of his applications filed in 1946 and on 28-5-1947 and sent Rs. 2/- by M.O. still copies have not as yet been supplied and the M.O. is returned to the plaintiff.

7. The plaintiff applied to the Mamlatdar, Collector and D.D.Collector, M.D. servants of defendant No.1 to allow him to appear through his pleader and to give his statement and to produce his papers and documents on 19-11-1948 by registered post but to no purpose.

The plaintiff is a poor illiterate and ignorant agricultu -rist he was not given any opportunity to bring his pleader and to produce his statement, was served with avillifying notice to prosecute him, As yet the copy of his first application made in 1946 to the Mamlatdar of Sindgi is not given to him It is missing. So, this suit is for a declaration to the effect that the sale on 10-8-1948 is a fraudulent one and the defendant No.1's agent coerced the plaintiff to credit Rs. 225/- on 10-8-1948 on the false assumption that his requests

in his 2 applicati ns of 1946-47 will be granted and to refund the sum of Rs. 225/- to the plaintiff and to declare the whole sale proceedings in this matter and case were bogus, false and illegal and irregular as it did not comply with the provisions of law Section 166 and 173 of L.R.Code.

8. The cause of action has arisen on 10-8-1948. or thereabout.

8. The parties belong to this place and the property and sale took place in Kannoli taluka Sindgi and the Court has jurisdiction totry it.

9. The suit being for declaration injunction to stop sale recovery alternative the valuation is for Rs. 5/- and hence this sum. Pleader's fee is me and the Court's jurisdiction the s me.

10. It is prayed i-

A). That the Court be pleased todeclare that the sale proceedings concerned were illegal and irregular and bugus not having provision of sections 166 and 173 L.R.Code.

B). That there was panch valuation at Rs. 15/- or rent of Rs. 4/- per year and the village site double in size in Simpi lane on the same dayfetched Rs. 200/- and this site being in Dhor lane would not fetch more than panch valuation.

C). That the C.I. and V.O. made false representation to the plaintiff about the measurement of the site proposed by concealing plaintiff's former applicationof 1946 and 25-7-2947 and practised fraud on him to produce Rs. 225/-.

D). The defendant 1's servants, Mamlatdar, D.D.Collector N.D. and aCollector, did not hear the various application made to them since 15-8-48 in this connection did not allow him to appear through pleader and put in his statement.

E). That the sale of 10-8-1948 be set aside and the amount of Rs. 225/- be refunded to the plaintiff.

F). The said proceedings papers in this connection be got produced at once and sealed.

G). Any other relief which the Court thinks fir equitable and proper.

This suit coming on this d 30-11-50 before Shri. A.C. Sequeira Civil Judge, Sr.Dn., Bijapur, in the presence of Shri. V.G.Muddebihalkar pleader for the plaintiff, Shri. K.M.Rao for defendant No.1 and Shri. A.M.Jahagirdar for defendant No.2 it is hereby ordered and decreed as under :-

In the result, the suit fails and is dismissed. Defendants to recover their costs from the plaintiff in separate sets.

Bill of Costs.

Plaintiff.		Deft.No.1.		Defendant No.2.	
1. Plaint M.	44-6-0	Pleader's fee	15-0-0	Vakalat	0-10-0
2. Vakalat	0-10-0	Stamps to exs.5,8,10	1-14-0	Stamps Exhs.7,9, 11,14	2- 1-0
3. Stamps to Exhs. 21,22, 25,26,28 &34.	1- 9-0		16-14-0	Pleader's fee	15-0-0
4. Pleader's fee	15-0-0	Stamps to exhs.Deduct	1-14-0		17-10-0
5. Process	6-0-0		15-0-0	Stamps to exhs 7,9, 12,14. deducted	2- 1-0 / 15-10-0
	67-9-0				
Stamps to Exs. 21,22,25 & 26 deducted	1-9-0 / 66/-				

Given under my hand and seal of the Court this day of 30-11-1950.

Sd/- S.H.Desai
Clerk

Sd/- A.C.Sequeira
Civil Judge, Sr.Dn.,
Bijapur.

"True Copy"

Desai
Govt. Pleader
Bijapur

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